IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated : 13-3-2007

Coram

The Honourable Mr.Justice P.SATHASIVAM
and
The Honourable Mr.Justice N.PAUL VASANTHAKUMAR

W.A.No.3943, 3947 and 4176 of 2004

W.A.No.3943 of 2004

S. Manickam ... Appellant/ Petitioner

Vs.

1. The Secretary to Government,
Industries Department,
Fort St.George,
Chennai - 600 009.

2. The Managing Director,
M/s.Tamil Nadu Magnesite Ltd.,
3/53, Omalur Main Road,
Jagir Ammapalayam Post,
Salem - 636 202.

3. M/s India Magnesite Products Ltd.,
rep.by its Chairman,
11/239, Balaji Towers,
Ramakrishna Road,
Salem - 636 007. ... Respondents/ Respondent

This writ appeal has been filed under Clause 15 of Letters Patent against the order of the learned single Judge in W.P.No.3707 of 2001 dated 25.6.2004.

W.P.No.3707/01, 5743/99 and 10336 of 99:- Petition presented to this Court under Article 226 of the Constitution of India to issue a writ of certiorarified mandamus calling for the records relating to order No.a. 1 (2) P & A/7313/ 98-99 b) 1 (2) P & A/7310/98-99 and c. 1(2) / P & A/ 7314/98-99 respectively dated 26.11.1998 passed by the second respondent and quash the same and direct the second respondent to transfer / absorb the petitioner in the services of the second respondent with all benefits.

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W.A.No.3947 of 2004

R. Thangavelu ... Appellant/ Petitioner

Vs.

1. The Secretary to Government,
   Industries Department,
   Fort St.George,
   Chennai - 600 009.
2. The Managing Director,
   M/s.Tamil Nadu Magnesite Ltd.,
   3/53, Omalur Main Road,
   Jagir Ammapalayam Post,
   Salem - 636 202.
3. M/s India Magnesite Products Ltd.,
   rep.by its Chairman,
   11/239, Balaji Towers,
   Ramakrishna Road,
   Salem - 636 007.

4. The Managing Director,
   M/s India Magnesite Products Ltd.,
   11/239, Balaji Towers,
   Ramakrishna Road,
   Salem - 636 007. ... Respondents/ Respondents

This writ appeal has been filed under Clause 15 of Letters Patent against the order of the learned single Judge in W.P.No.5743 of 1999 dated 25.6.2004.

W.A.No.4176 of 2004

R. Ramasamy ... Appellant/ Petitioner

Vs.

1. The Secretary to Government,
   Industries Department,
   Fort St.George,
   Chennai - 600 009.

2. The Managing Director,
   M/s.Tamil Nadu Magnesite Ltd.,
   3/53, Omalur Main Road,
   Jagir Ammapalayam Post,
   Salem - 636 202.

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3. M/s India Magnesite Products Ltd.,
rep.by its Chairman,
11/239, Balaji Towers,
Ramakrishna Road,
Salem - 636 007.

4. The Managing Director,
M/s India Magnesite Products Ltd.,
11/239, Balaji Towers,
Ramakrishna Road,
Salem - 636 007. ... Respondents/ Respondents

This writ appeal has been filed under Clause 15 of Letters Patent against the order of the learned single Judge in W.P.No.10336 of 1999 dated 25.6.2004.

For Appellants in all the writ appeals : Mr.R.Muthukumarasamy, Senior Counsel, for Mr.P.Srinivas

For 1st Respondent in all the writ appeals: Mr.P.Subramanian, Government Advocate

For 2nd Respondent in all writ appeals: Mr.A.L.Somayaji, Senior Counsel, for Mr.M.R.Raghavan

For 3rd Respondent in all writ appeals and for 4th Respondent in W.A.Nos.3947 & 4176/2004: Mr.Karthik for M/s T.S.Gopalan & Co.

COMMON JUDGMENT

N. PAUL VASANTHAKUMAR, J.

These writ appeals are directed against the orders of the learned single Judge dated 25.6.2004 and 15.6.2004 made in W.P.Nos.3707 of 2001, 5743 of 1999 and 10336 of 1999 respectively, wherein the learned single Judge dismissed the writ petitions filed by the appellants herein.

2. The brief facts necesssary for disposal of the writ appeals are as follows.

(a) Appellants were appointed as Assistant Project Engineer (Mechanical), Junior Foreman (Mechanical) and Deputy Manager (Mechanical) respectively in the Tamil Nadu Magnesite Limited, the second respondent herein (hereinafter referred as TANMAG), which is

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a Company fully owned by the Government of Tamil Nadu.

(b) The TANMAG invited applications through paper advertisement and called for applications for the respective posts and the appellants applied for the same and they were selected and appointed by orders dated 12.9.1983, 23.11.1988 and 18.8.1989 respectively by the TANMAG and the appellants joined duty in the respective posts.

(c) The appellants executed bonds to serve in TANMAG for a minimum period of three years. The TANMAG confirmed the services of the appellants through its proceedings dated 25.10.1985, 30.4.1991 and 24.8.1989 respectively.

(d) TANMAG was implementing the Rotary Kiln Project and the third respondent company was formed subsequently. The Government of Tamil Nadu by G.O.Ms.No.41 Industries Department, dated 10.1.1979 to implement the policy decision taken by the Government of Tamil Nadu to reserve the mineral prone areas of magnesite for state exploitation. The day-to-day affairs of the TANMAG was looked after by the Managing Director, appointed by the State Government and all the Board of Directors were also appointed by the State Government, apart from approving policy decisions taken from time to time. The appellants were paid the revised pay by the TANMAG as per the pay commission recommendations made by the Government of Tamil Nadu.

(e) In the year 1990, through G.O.Ms.No.855 Industries Department, dated 16.8.1990 the Government of Tamil Nadu decided to implement the Chemical Beneficiation Project in Joint Venture with M/s.Kaitan Supermag Limited. TANMAG retained the overall control of the company, being the largest shareholder.

(f) The third respondent Company being a Joint Venture Company, TANMAG conveyed to the appellants that the cadre strength in TANMAG was surplus and therefore the appellants were called upon to express their willingness to work in the Joint Venture Company with the then existing pay and other facilities without any disadvantage. It was also mentioned in the said communication that if no option is given the appellants' services will be terminated. After the prolonged correspondene, TANMAG agreed to transfer the appellants to the third respondent, without any monetary loss and alteration of service conditions with seniority and other benefits.

(g) In the year 1993, TANMAG transferred the mining lease held in its name to the third respondent for the purpose of raw material requirements. However, the third respondent was not able to mobilise sufficient funds for imlementing the Chemical Beneficiation Project in full and therefore the project become unremunerative and consequently the third respondent company decided to close down the implementation of the Chemical Beneficiation Project through G.O.Ms.No.140 Industries (MME2) Department, dated 11.5.1998.

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(h) The Government permitted the TANMAG to dispose of the equipments imported for the project and the Managing Director of TANMAG was requested to work out the modalities of the closure of the project including transfer of 47 acres of land made by TANMAG in favour of the third respondent. Further the appellants and others, who were transferred to the third respondent were not reverted back to TANMAG while resuming the land and machineries as stated supra. The apellants' request to revert them to TANMAG has not been complied with and the TANMAG through letter dated 26.11.1998 rejected the request by stating that the appellants have no lien in TANMAG and they have no right to seek transfer of their service to TANMAG.

(i) The said order dated 26.11.1998 was challenged by the appellants in the respective writ petitions contending that the appellants were recruited by TANMAG and were transferred with all service benefits, pay protection, etc., to the third respondent when it was formed, and when it was closed and re-transferred all its assets back to TANMAG, the employees transferred from the second respondent to the third respondent should also be automatically reverted back to TANMAG pursuant to the closure of the third respondent company and the action of TANMAG in not re-transfering the appellants to its service is erroneous and prayed for quashing the said order dated 26.11.1998 with a consequential direction to TANMAG to re-transfer/absorb the appellants in the service of TANMAG with all benefits such as seniority on par with their immediate juniors, arrears of pay and allowances with service benefits that would have been accrued in favour of the appellants if they had continued in the service of TANMAG.

3. The TANMAG resisted the writ petitions by filing counter affidavit by contending that TANMAG is a separate entity and no writ is maintainable against it, even though the Board of Directors are named by the Government, the Company is managed by the Managing Director under the control and superintendence of the Board of Directors. It is also stated in the counter affidavit that the appellants were recruited for the project as per the advertisement and the appellants were transferred to the joint venture company, the third respondent herein, and transfers were effected on the basis of the advance notice dated 18.3.1991 and their services were permanently transferred and they were relieved from TANMAG from 31.7.1991. The service conditions were protected at the time of transfer to the third respondent and after the transfer the appellants have lost their lien and they became the employees of the third respondent and they have no right to demand reversion to TANMAG merely because the third respondent company had been closed. It is also stated in the counter affidavit that the appellants having opted and gave their willingness to be absorbed in the third respondent company, it is not open to them to claim that they should

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be re-transferred to TANMAG on the closure of the third respondent company.

4. The learned single Judge considering the rival submissions and taking note of the fact that the lien of the appellants have been lost due to their transfer to the third respondent, they became the staff of the third respondent and since there is no deputation as claimed by the appellants, the appellants cannot claim that they should be reverted back to TANMAG and consequently dismissed the writ petitions. Being aggrieved by the said orders, the present writ appeals are filed.

5. The learned senior Counsel appearing for the appellants submitted that the appellants having been appointed on condition that they should work in any place/concern in which the TANMAG has interest and the said clause having been invoked while transferring the appellants from TANMAG to the third respondent, and the third respondent having been a Joint Venture Company in which TANMAG was a shareholder having control, and the third respondent Company with its machinery having been transferred to TANMAG on closure, it is not justified in not retransferring the appellants. It is also argued that the learned single Judge rejected the writ petitions on the ground that the appellants have lost their lien in the second respondent company on being transferred to the third respondent. Even though the lien is lost the appellants having been trnasferred with continuity of service, pay protection, seniority, etc., and TANMAG is continuously in operation, appellants are entitled to be reverted back to TANMAG, particularly when they were forced to give their option in the year 1991 for being transferred to the third respondent.

6. The learned senior counsel for TANMAG/the second respondent submitted that the appellants having been selected for the particular project and the particular project having been entrusted to the third respondent and on the basis of the option given by the appellants to be absorbed in the third rspondent company the appellants were transferred by TANMAG in the year 1991 and their liens have been lost and on closure of the third rspondent, the appellants cannot claim that they should be reverted back to TANMAG for continuing their post.

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7. We have also heard the learned counsel appearing for the respective respondents 1 and 3 and considered all the documents filed and pleadings made by the respective parties.

8. The specific case of the appellants is that TANMAG invited applications for appointment through advertisement made in the Hindu dated 23.2.1983 and the appellants were appointed as Assistant Project Engineer (Mechanical), Junior Foreman (Mechanical) and

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Deputy Manager (Mechanical) respectively with a specific clause in the appointment order that the rules and regulations of the Company in respect of the service, conduct and discipline will apply and an agreement was entered into between the appellants and TANMAG specifically stating that the appellants shall serve the company after confirmation and the appellants shall abide by the rules and regulations of the company among other things. After the completion of probation, TANMAG confirmed the appellants services. Thereafter the appellants were temporarily transferred to the Rotary Kiln Plant and thereafter the Government of Tamil Nadu issued G.O.Ms.No.855 Industries (MME-2) Department dated 16.8.1990 took a decision to form a Joint Sector Company retaining the 26% of the shares by TANMAG under the name and style of 'Salem Magnesite Products Limited', later on renamed as 'India Magnesite Products Limited'. By G.O.Ms.No.66 Industries (MME-2) Department, dated 14.2.1991, the Government of Tamil Nadu transferred the lands, non-refractory grade materials etc., to the third respondent after which the promoters agreement for joint sector project was entered into and clause 7(4) of the agreement reads as follows,

> "7.4 The officers and staff of the First Party involved in the implementation of the Project prior to the date of these presents shall be given employment in the Company. For this purpose, the First Party shall provide to the Second Party a certified list with all details of such personnel and such list of personnel shall be given employment in the COmpany, in such a manner as to adequately protect the service conditions as enjoyed by them during their employment with the First Party. The date of joining the services of the First Part shall be deemed to be the date of joining the Company for reckoning the length of service of such personnel for all purposes including the payment of gratuity. The First party shall pay to the Company a sum equal to the gratuity liability accrued as may be actually certified in respect of such personnel appointed in the services of the Company, provided that in calculating the gratuity amount the eligibility period of the personnel of five years shall be waived."

9. As per the said clause, the date of joining in service of TANMAG shall be deemed to be the date of joining in the third respondent Company for reckoning the length of service for all purposes including the payment of gratuity. From the letter of TANMAG dated 11.5.1991 it is made clear that the terms and conditions of the employment enjoyed in TANMAG are also protected

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and the transfer of the service is proposed without any disadvantage and on such condition the appellants were directed to give option, for which the appellants submitted willingness to depute them under clause 2.17 with all previleges, perquisites and facilities enjoyed in the second respondent. TANMAG, through its communication dated 20.6.1992 stated that the appellants will be given employment in the third respondent Joint Venture Company in such a manner with adequate protection of service conditions as enjoyed during their employment with it and the date of joining in the service of TANMAG shall be deemed to be the date of joining at the Joint Venture Company for reckoning the length of service for all purposes including the payment of gratuity and thereafter the appellants were transferred to third respondent Company in the same cadre.

10. The appellants, after knowing that the third respondent was unable to take up the work on Chemical Beneficiation Project apprehended about their employment career and requested the TANMAG to consider for reverting to its service for which no reply was given and the Government of Tamil Nadu issued G.O.Ms.No.140 Industries Department, dated 11.5.1998 granting approval of closure of the Chemical Beneficiation project. In the said order it is ordered to transfer all the raw materials and also mining lease with magnesite ore without stating anything about the employees working in the third respondent company. The closure of the said Company was accepted by the Government based on the recommendations of TANMAG. On 31.10.1998, the appellants along with three others also submitted representations to revert them back to TANMAG, for which no reply is received.

11. The grievance of the appellants now focussed by the learned counsel for the appellants is that even though they have lost their lien on their transfer to the third respondent Joint Venture Company, since their transfer is on condition that their earlier services in TANMAG and all previleges will be continued and particularly, when the closure of the third respondent is based on the recommendations of TANMAG, the employees working in the third respondent company should also be absorbed in TANMAG.

12. The learned Senior Counsel for the appellants submitted that about 16 persons were transferred to the third respondent of which only five persons are now seeking re-transfer and all other 11 persons joined in some other concern and out of the said five persons, the appellants are three in number and they are aged more than 50 years and rendered service for several years.

13. Taking note of the said submissions, we are of the view that the appellants are entitled to be taken back by TANMAG in terms of the earlier transfer order, which protects the service conditions of the appellants and TANMAG is not justified in contending now that

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since the appellants are not having their lien with TANMAG, they cannot be re-transferred. The assurance given in the letter dated 11.5.1991 clearly states that the transfer of service is without any disadvantage.

14. From the records produced by the appellants, the relevant portion of which is extracted in the previous paragraph, we are of the view that the stand taken by TANMAG is contrary to the assurance given to the appellants when they were compulsorily transferred to the third respondent. As rightly contended by the learned counsel for the appellants, when the third respondent was ordered to be closed on the recommendations of TANMAG, all the assets were taken over by it and therefore there is no justification in denying absorption of the appellants, who are unable to seek any other employment at this age of above 50 years. The TANMAG is bound by the assurance given to the appellants while seeking their consent, particularly by stating that the terms and conditions of the employment enjoyed in TANMAG are also protected and transfer of the service is proposed without any disadvantage. The third respondent Company is closed at the instance of TANMAG and by virtue of the closure, the appellants are in disadvantageous stage and therefore TANMAG is estopped from now contending that the appellants will not be absorbed in TANMAG.

15. Our finding is also based on the decisions of the Honourable Supreme Court dealing with promissory estoppel.

(i) In the decision reported in (1970) 1 SCC 582 (Century Spg. and Mfg. Co. Ltd. v. Ulhasnagar Municipal Council) at paragraphs 11 and 12, the Honourable Supreme Court dealt with the principle of promissory estoppel as follows,

> "11. Public bodies are as much bound as private individuals to carry out representations of facts and promises made by them, relying on which other persons have altered their position to their prejudice. The obligation arising against an individual out of his representation amounting to a promise may be enforced ex contracts by a person who acts upon the promise: when the law requires that a contract enforceable at law against a public body shall be in certain form or be executed in the manner prescribed by statute, the obligation may if the contract be not in that form be enforced against it in appropriate cases in equity. In Union of India v. Indo-Afghan Agencies Ltd. this Court held that the Government is not exempt from the equity arising out of the acts done by citizens to their prejudice, relying upon the representations as to its future conduct made by

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the Government. This Court held that the following observations made by Denning, J., in Robertson v. Minister of Pensions applied in India:

"The Crown cannot escape by saying that estoppels do not bind the Crown for that doctrine has long been exploded. Nor can the Crown escape by praying in aid the doctrine of executive necessity, that is, the doctrine that the Crown cannot bind itself so as to fetter its future executive action."

We are in this case not concerned to deal with the question whether Denning, L.J., was right in extending the rule to a different class of cases as in Falmouth Boat Construction Co. Ltd. v. Howell, where he observed at p. 542:

"Whenever Government officers in their dealings with a subject take on themselves to assume authority in a matter with which the subject is concerned, he is entitled to rely on their having the authority which they assume. He does not know, and cannot be expected to know, the limits of their authority, and he ought not to suffer if they exceed it."

It may be sufficient to observe that in appeal from that judgment (Howell v. Falmouth Boat Construction Co. Ltd.) Lord Simonds observed after referring to the observations of Denning, L.J.:

"The illegality of an act is the same whether the action has been misled by an assumption of authority on the part of a Government officer however high or low in the hierachy.

* * *

The question is whether the character of an act done in force of a statutory prohibition is affected by the fact that it had been induced by a misleading assumption of authority. In my opinion the answer is clearly: No."

12. If our nascent democracy is to thrive different standards of conduct for the people and the public bodies cannot ordinarily be

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> permitted. A public body is, in our judgment, not exempt from liability to carry out its obligation arising out of representations made by it relying upon which a citizen has altered his position to his prejudice."

(ii) Same is the view expressed in the decision reported in (1979) 4 SCC 409 (Motilal Padampat Sugar Mill Co. Ltd v. State of U.P.), wherein the Honourable Supreme Court held that the doctrine of promissory estoppel is not really based on the principle of estoppel, but it is a doctrine evolved by equity in order to prevent injustice and it can be the basis of a cause of action.

(iii) In the decision reported in (1981) 2 SCC 673 (Bhim Singh v. State of Haryana), in paragraph 3 it is held thus,

> "3. By virtue of Ex. P-1, the State (respondent) held out certain specific promises as an inducement for the appellants to move into a New Department (Agriculture Department). After they had gone over to the Agriculture Department, the State, by virtue of its Ex. P-3, sought to go back upon the earlier promise made in Ex. P-1. The appellants having believed the representation made by the State and having further acted thereon cannot now be defeated of their hopes which have crystallised into rights, thanks to the application of the doctrine of promissory estoppel. Therefore, it is not open to the State, according to the law laid down by this Court, to backtrack. We, therefore, direct the State to implement Ex. P-1 and confer such rights and benefits as are promised thereunder in entirety. Shri B. Datta says that a little time may be necessary for the various departments to readjust. We allow three months' time for implementation of Ex. P-1, failing which the State will be held in breach."

In view of our finding that the appellants have been given a promise in an unequivocal term while transferring them to the third respondent company by the second respondent company that their service conditions will be protected without any disadvantage, we are of the view that the principles laid down in the above judgments equally apply to the facts of this case.

16. The learned single Judge did not advert to the said issue and dismissed the writ petitions on the ground of loss of lien alone. Hence we are of the view that the order of the learned single Judge dismissing the writ petitions are liable to be set

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aside and the appellants are entitled to be absorbed in the second respondent/TANMAG. As the appellants/writ petitioners are not in service pursuant to the impugned order passed by the second respondent/TANMAG, they are not entitled to get backwages on the principle of 'No work, No pay'.

17. In the result,

(i) The order of the learned single Judge made in W.P.No.3707 of 2001 dated 25.6.2004, W.P.No.5743 of 1999 dated 25.6.2004 and W.P.No.10336 of 1999 dated 25.6.2004 are set aside.

(ii) The second respondent/TANMAG is directed to absorb the appellants/writ petitioners with continuity of service and other attendant benefits without backwages.

(iii) The second respondent/TANMAG is directed to pass necessary orders to the above effect within a period of four weeks from the date of receipt of copy of this order.

(iv) The Writ appeals are allowed in the above terms.

(v) There will be no order as to costs.

Sd/-
Asst. Registrar.

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Sub Asst. Registrar.

vr

To

1. The Secretary to Government, Industries Department,
Fort St.George, Chennai - 600 009.

2. The Managing Director, M/s.Tamil Nadu Magnesite Ltd.,
3/53, Omalur Main Road, Jagir Ammapalayam Post,
Salem - 636 202.

3. The Chairman, M/s India Magnesite Products Ltd.,
11/239, Balaji Towers, Ramakrishna Road,
Salem - 636 007.

1 cc to the Government Pleader, Sr. 15546
3 cc to Mr.P. Srinivas, Advcoate, Sr. 15412
1 cc to Mr.T.S. Gopalan, Advocate, sr. 15508
1 cc to mr.M.R. Raghavan, Advocate, sr. 16242

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